

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 August 26, 2020

17 10:05 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Notice of Agenda / Agenda for August 26, 2020

2 Hearing

3

4 HEARING re Notice of Hearing / Notice of Second Interim Fee

5 Hearing

6

7 HEARING re Second Interim Fee Application of PJT Partners LP

8 as Investment Banker to the Debtors and Debtors-In-

9 Possession for Allowance of Compensation for Services

10 Rendered and for the Reimbursement of All Actual and

11 Necessary Expenses Incurred for the Period: 2/1/2020 to

12 5/31/2020, fee:\$900,000.00, expenses: \$14,563.51. filed by

13 PJT Partners LP. (ECF #1356)

14

15 HEARING re First Interim Application of Cornerstone Research

16 for Compensation for Services Rendered and Reimbursement of

17 Expenses Incurred as Consultant to the Debtors for

18 the Period : 1/14/2020 to 5/31/2020, fee:\$483,554.00,

19 expenses: \$0.00. filed by Cornerstone Research (ECF #1360)

20

21 HEARING re Second Interim Application of Davis Polk &

22 Wardwell LLP for Compensation for Services Rendered and

23 Reimbursement of Expenses Incurred as Counsel to the Debtors

24 and Debtors In Possession for the Period: 2/1/2020 to

25 5/31/2020, fee:\$19,433,107.7, expenses: \$97,640.46. filed by

1 Davis Polk & Wardwell LLP (ECF #1390)

2  
3 HEARING re Application for Interim Professional Compensation  
4 AlixPartners, LLPs Second Interim Application as Financial  
5 Advisor to the Chapter 11 Debtors for the Period: 2/1/2020  
6 to 5/31/2020, fee:\$6,093,040.50, expenses: \$112,995.42 filed  
7 by AlixPartners LLP (ECF #1391)

8  
9 HEARING re Second Application for Interim Professional  
10 Compensation for Arnold & Porter Kaye Scholer LLP, Debtor's  
11 Attorney, period: 2/1/2020 to 5/31/2020, fee:\$543,466.74,  
12 expenses: \$70.00. filed by Arnold & Porter Kaye Scholer LLP  
13 (ECF #1392)

14  
15 HEARING re Second Fee Application of King & Spalding LLP for  
16 Compensation for Services Rendered and Reimbursement of  
17 Expenses Incurred as Special Counsel to the Debtors  
18 and Debtors in Possession for the Period: 2/1/2020 to  
19 5/31/2020, fee:\$4,636,674.50, expenses: \$35.25. filed by  
20 Scott I. Davidson, KING & SPALDING LLP (ECF #1394)

21  
22 HEARING re Second Application for Interim Professional  
23 Compensation for Wilmer Cutler Pickering Hale and Dorr LLP,  
24 Debtor's Attorney, period: 2/1/2020 to 5/31/2020,  
25 fee:\$294,865.56, expenses: \$2,416.88. filed by George W.

1 Shuster Jr. (ECF #1395)

2  
3 HEARING re Second Joint Interim Fee Application of KPMG LLP  
4 as Tax Consultant to the Debtors and the Official Committee  
5 of Unsecured Creditors for Allowance of Compensation for  
6 Services Rendered and Reimbursement of Expenses for the  
7 Period: 2/1/2020 to 5/31/2020, fee:\$2,000,637.75, expenses:  
8 \$592.22. filed by KPMG LLP (ECF #1396)

9  
10 HEARING re Second Interim Application of Ernst & Young LLP  
11 for Compensation and Reimbursement of Expenses Incurred as  
12 Auditors for the Debtors for the Period: 2/1/2020 to  
13 5/31/2020, fee:\$595,000.00, expenses: \$3,373.18. filed by  
14 Ernst & Young LLP (ECF #1400)

15  
16 HEARING re Second Interim Fee Application of Jones Day for  
17 Compensation for Services Rendered and Reimbursement of  
18 Actual and Necessary Expenses Incurred as Special Counsel to  
19 the Debtors for the Retention Period: 2/1/2020 to 5/31/2020,  
20 fee:\$735002.54, expenses: \$40243.35 (ECF #1406)

1 HEARING re Response to Motion for Order Modifying the  
2 Automatic Stay to Permit the Debtors to Prosecute Certain  
3 Pending Patent Litigation (related document(s)1328) filed by  
4 Scott F. Gautier on behalf of Collegium Pharmaceutical, Inc.  
5 (ECF #1463)

6  
7 HEARING re Second Interim Fee Application Of Skadden, Arps,  
8 Slate, Meagher & Flom LLP For Compensation For Services  
9 Rendered And Reimbursement Of Expenses As Special  
10 Counsel To The Debtors For The Period: 2/1/2020 to  
11 5/30/2020, fee:\$5,021,610.48, expenses: \$19,770.49  
12 (ECF #1411)

13  
14 HEARING re Notice of Amended Summary Statement for Second  
15 Interim Fee Application of Dechert LLP, Special Counsel for  
16 the Debtors, for Compensation for Professional  
17 Services Rendered and Reimbursement of Actual and Necessary  
18 Expenses Incurred (related document(s)1399) filed by Shmuel  
19 Vasser on behalf of Dechert LLP (ECF #1439)

20  
21 HEARING re Second Interim Fee Application of Dechert LLP, as  
22 327(e) Special Counsel, for Compensation for Professional  
23 Services Rendered and Reimbursement of Actual and  
24 Necessary Expenses Incurred During the Period: 2/1/2020 to  
25 5/31/2020, fee: \$3,434,410.64, expenses: \$408,656.15. filed

1 by Dechert LLP (ECF #1399)

2  
3 HEARING re Second Interim Fee Application of Akin Gump  
4 Strauss Hauer & Feld LLP as Counsel to The Official  
5 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
6 al., for Allowance of Compensation for Services Rendered and  
7 Reimbursement of Expenses for the Period: 2/1/2020 to  
8 5/31/2020, fee:\$17,563,479, expenses: \$236,045.74.(related  
9 document(s)1407) filed by Akin Gump Strauss Hauer & Feld  
10 LLP. (ECF #1441)

11  
12 HEARING re First Interim Fee Application of Bedell Cristin  
13 Jersey Partnership as Special Foreign Counsel to The  
14 Official Committee of Unsecured Creditors of Purdue Pharma  
15 L.P., et al., for Allowance of Compensation for Services  
16 Rendered for the Period : 2/27/2020 to 5/31/2020,  
17 fee:\$30,288.00, expenses: \$0.00.(related document(s)1405)  
18 filed by Bedell Cristin Jersey Partnership (ECF #1442)

19  
20 HEARING re First Interim Fee Application of Cole Schotz P.C.  
21 as Co-Counsel to The Official Committee of Unsecured  
22 Creditors of Purdue Pharma L.P., et al., for Allowance of  
23 Compensation for Services Rendered and Reimbursement of  
24 Expenses for the Period: 2/24/2020 to 5/31/2020,  
25 fee:\$2,535,250.50, expenses: \$310.50. (related

1 document(s)1404) filed by Cole Schotz P.C. (ECF #1443)

2

3 HEARING re Second Interim Application of Jefferies LLC for  
4 Allowance of Compensation for Services Rendered and  
5 Reimbursement of Expenses Incurred as Investment Banker for  
6 The Official Committee of Unsecured Creditors for the Period  
7 : 2/1/2020 to 5/31/2020, fee:\$900,000.00, expenses:  
8 \$35,964.54. (related document(s)1402) filed by Jefferies  
9 LLC. (ECF #1444)

10

11 HEARING re Second Interim Fee Application of Kurtzman Carson  
12 Consultants LLC as Information Agent to The Official  
13 Committee of Unsecured Creditors for Allowance of  
14 Compensation for Professional Services Rendered and for  
15 Reimbursement of Actual and Necessary Expenses Incurred,  
16 period: 2/1/2020 to 5/31/2020, fee:\$222,215.06,  
17 expenses: \$15,629.35. (related document(s)1401) filed by  
18 Kurtzman Carson Consultants LLC. (ECF #1445)

19

20 HEARING re Second Interim Application of Province, Inc.,  
21 Financial Advisor to The Official Committee of Unsecured  
22 Creditors of Purdue Pharma L.P., et al., for Compensation  
23 and Reimbursement of Expenses for the Interim Period :  
24 2/1/2020 to 5/31/2020, fee: \$4,537,231.50, expenses:  
25 \$7,777.02. (related document(s)1403) filed by Province,

1 Inc. (ECF #1446)

2  
3 HEARING re Application of Otterbourg P.C. as Co-Counsel to  
4 the Ad Hoc Committee of Governmental and Other Contingent  
5 Claimants for Second Interim Allowance of Compensation for  
6 Services Rendered and Reimbursement of Expenses Incurred  
7 period: 2/1/2020 to 5/31/2020, fee:\$336,192.00, expenses:  
8 \$1,604.92.(related document(s)1414) filed by Otterbourg P.C.  
9 (ECF #1456)

10  
11 HEARING re Second Interim Fee Application of FTI Consulting,  
12 Inc. for Compensation Earned and Expenses Incurred for the  
13 Period: 2/1/2020 to 5/31/2020, fee:\$1,908,622.50, expenses:  
14 \$12,265.84.(related document(s)1416) filed by FTI  
15 Consulting, Inc. (ECF #1457)

16  
17 HEARING re Second Interim Application of Gilbert LLP, for  
18 Allowance of Compensation for Services Rendered and  
19 Reimbursement of Expenses Incurred as Co-Counsel to the Ad  
20 Hoc Committee of Governmental and Other Contingent  
21 Litigation Claimants for the Period: 2/1/2020 to 5/31/2020,  
22 fee:\$1,078,669.00, expenses: \$23,191.60.(related  
23 document(s)1417) filed by Gilbert LLP (ECF #1458)



1 HEARING re Second Interim Application of Kramer Levin  
2 Naftalis & Frankel LLP, as Co-Counsel to the Ad Hoc  
3 Governmental and Other Contingent Litigation Claimants, for  
4 Allowance of Compensation for Professional Services Rendered  
5 and for Reimbursement of Actual and Necessary Expenses  
6 Incurred for the Period: 2/1/2020 to 5/31/2020, fee:  
7 \$1,568,914.50, expenses: \$92,717.65. (related  
8 document(s)1418) filed by Kramer Levin Naftalis & Frankel  
9 LLP (ECF #1459)

10

11 HEARING re First Interim Application of Bielli & Klauder,  
12 LLC for Compensation for Services Rendered and Reimbursement  
13 of Expenses Incurred as Counsel to the Fee Examiner,  
14 David M. Klauder, Esquire for the Period: 4/8/2020 to  
15 5/31/2020, fee: \$83,375.00, expenses: \$. filed by Bielli &  
16 Klauder, LLC, David M. Klauder (ECF #1447)

17

18 HEARING re Motion to Intervene on behalf of The National  
19 Association for the Advancement of Colored People  
20 (ECF #1555)

21

22 HEARING re THE NON-CONSENTING STATES' STATEMENT IN SUPPORT  
23 OF THE MOTION TO INTERVENE (related document(s)1555) filed  
24 by Andrew M. Troop on behalf of Ad Hoc Group of Non-  
25 Consenting States (ECF #1585)

1 HEARING re Response to Motion Filed by the NAACP and their  
2 Supporting Memorandum, 08/07/20 (related document(s)1555)  
3 filed by Ronald Bass Sr. (ECF #1587)

4

5 HEARING re The Multi-State Governmental Entities Group's  
6 Statement in Support of the NAACP's Motion to Intervene  
7 (related document(s)1555) filed by Kevin C. Maclay on behalf  
8 of Multi-State Governmental Entities Group (ECF #1589)

9

10 HEARING re Debtors' Statement in Support of the Motion to  
11 Intervene on Behalf of the NAACP (related document(s)1555)  
12 filed by James I. McClammy on behalf of Purdue Pharma  
13 L.P. (ECF #1596)

14

15 HEARING re Statement / Ad Hoc Committees Statement in  
16 Support of the Motion to Intervene of the National  
17 Association for the Advancement of Colored People (related  
18 document(s)1555) (ECF #1599)

19

20 HEARING re Debtors Motion for Order Modifying the Automatic  
21 Stay to Permit the Debtors to Prosecute Certain Pending  
22 Patent Litigation (ECF #1328)

23

24 HEARING re Response to Motion for Order Modifying the  
25 Automatic Stay to Permit the Debtors to Prosecute Certain

1 Pending Patent Litigation (related document(s)1328) filed by  
2 Scott F. Gautier on behalf of Collegium Pharmaceutical, Inc.  
3 (ECF #1463)

4  
5 HEARING re Omnibus Objection and Reply in Support of  
6 Debtors' Motion for Order Modifying the Automatic Stay to  
7 Permit the Debtors to Prosecute Certain Pending Patent  
8 Litigation [related document 1465] (related document(s)1465)  
9 filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P.d  
10 (ECF #1592)

11  
12 HEARING re Motion for Relief from Stay filed by Scott F.  
13 Gautier on behalf of Collegium Pharmaceutical, Inc.  
14 (ECF #1465)

15  
16 HEARING re Response to Debtors Omnibus Objection to  
17 Collegium Pharmaceutical, Inc's Motion for Relief from the  
18 Automatic Stay and Debtors Reply in Support of Debtors  
19 Motion for Order Modifying the Automatic Stay to Permit the  
20 Debtors to Prosecute Certain Pending Patent Litigation  
21 (related document(s)1592)

22  
23 HEARING re Response to Debtors' Omnibus Objection to  
24 Collegium Pharmaceutical, Inc.'s Motion for Relief from the  
25 Automatic Stay and Debtors' Reply in Support of Debtors'

1 Motion for Order Modifying the Automatic Stay to Permit the  
2 Debtors to Prosecute Certain Pending Patent Litigation  
3 (related document(s)1592) filed by Scott F. Gautier on  
4 behalf of Collegium Pharmaceutical, Inc. (ECF #1601)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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9 ALSO PRESENT TELEPHONICALLY:

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13 LAWRENCE FOGELMAN

14 SHMUEL VASSER

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19 ARTEM SKOROSTENSKY

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7 BROOKS BARKER  
8 MICHELLE P. HURLEY  
9 ANN LANGLEY  
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12 MELANIE CYGANOWSKI  
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14 JUSTIN ALBERTO  
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16 JUSTIN ALBERTO  
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23 NICHOLAS PRETY  
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4 BRIAN GARCIA  
5 RORY GREISS  
6 ANNA KORDAS  
7 KAREN NEWBURY  
8 RACHAEL RINGER  
9 M. VIOLA SO  
10 KATIE STADER  
11 EDWARD BISCH  
12 CATRINA SHEA  
13 JESSE DELCONTE  
14 GEORGE SHUSTER  
15 MATT DIAZ  
16 FRANCOIS BLAUDEAU  
17 MICHAEL ATKINSON  
18 DENNIS CHU  
19 DENNIS CHU  
20 BENJAMIN KAMINETZKY  
21 DAVID MOLTON  
22 BARBARA VAN ROOYAN  
23 DEVON BRADY  
24 MARA LEVENTHAL  
25 CYNTHAI MUNGER



1 JOHN NORMILE  
2 JAKE HOLDREITH  
3 RONALD BASS  
4 JEFFREY GARFINKLE  
5 BRANDAN MONTMINY  
6 HAYLEY THEISEN  
7 PAUL SCHWARTZBERG  
8 TIMOTHY GRAULICH  
9 DAVID ZWALLY  
10 KAMI QUINN  
11 ANDREW TROOP  
12 DAVID KLAUDER  
13 SHIRLEY KUHLMANN  
14 CYRUS MEHRI  
15 STEVEN SKALET  
16 AISHA RICH

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.  
3 We're here on in re: Purdue Pharma, L.P., et al. This is  
4 an entirely telephonic hearing. I'll ask you to identify  
5 yourself and your client the first time you speak. I may do  
6 so later if I think the court reporter can't put together  
7 your voice with your name and client.

8 There's one authorized recording of this hearing.  
9 It's taken by Court Solutions. Court Solutions provides a  
10 copy on a daily basis to our clerk's office. If you want to  
11 obtain a transcript of the hearing, you should contact our  
12 clerk's office to arrange for the production of one.

13 With that introduction, I have the Debtor's  
14 amended agenda for today's hearing, and I'm happy to go down  
15 the agenda, as stated, unless someone wants to proceed in  
16 some other fashion and I'll hear them on that.

17 MR. HUEBNER: Thank you, Your Honor. It's  
18 Marshall Huebner for the record, of Davis Polk & Wardwell  
19 for the Debtors. Can the Court hear me clearly?

20 THE COURT: Yes, I can, thanks.

21 MR. HUEBNER: Okay, terrific. Well, good morning,  
22 Your Honor. So, happily, today's agenda is very brief and I  
23 actually don't really have any extra agenda items. Just two  
24 very quick notes at the outset. Number one, although  
25 obviously the rest of the journey -- we still have a few

1 days left ahead of us but I think it was essentially my  
2 request, to which the Court agreed or acceded at the last  
3 hearing, to set an August 31 end date for mediation barring  
4 extraordinary circumstance does appear to, in fact, have  
5 been a very important move for the progress of these cases.  
6 Because, obviously, the mediation is confidential, I'm very  
7 limited in what it would be appropriate to say, except to  
8 say that many people are working very, very, very hard in  
9 the re-pressurized or extra-pressurized situation and  
10 hopefully that deadline will sub in, as I said at the last  
11 hearing, for the fact that many of the tools the mediators  
12 often employ to help pressurized situations and bring people  
13 to deals are not available in light of the many crises that  
14 are racking our country at present.

15 The other brief note, Your Honor, as the Court no  
16 doubt saw because the Court reads everything, the creditors  
17 committee filed a brief discovery update letter last night -  
18 - speaking with Akin Gump about it. I think they did that  
19 for salutary purposes, which is to avoid the need for sort  
20 of saying, let me give you an update, Your Honor, and then  
21 lots of other people sort of express their views, and then  
22 we end up having an unplanned hour and 20 minutes about  
23 discovery. They thought that a brief letter setting forth  
24 their view of where things are would actually be a  
25 substitute for the need to make oral remarks.

1           You know, it goes without saying that, obviously,  
2       there are people, including the Debtors on some of the  
3       issues, who have somewhat different views about where things  
4       are or might best be going, but to get the whole point was  
5       to avoid dialogue at this hearing about that since there's  
6       nothing ripe for the Court. There also I should say many,  
7       many things are going on in many corners, as the Court might  
8       expect. And if and as there are things that need the  
9       Court's intervention, everybody knows where to find you.

10           So, with that, I think I have nothing more to say  
11       about that topic either. And, in fact, I'm ready to move to  
12       our hopefully pretty limited agenda. So, item number --

13           THE COURT: Can I just interrupt you for a second?  
14       I did have a chance to read that letter and I agree with  
15       you, I don't think it would be productive to discuss the  
16       discovery process further in light of the fact that the  
17       stipulations have been entered pertaining to discovery. And  
18       I have time available, of course, if there are further  
19       disputes, including with respect to privilege issues in the  
20       month of September. And I agree again for a discovery  
21       conference in the interim if someone believes that that's  
22       important and they've not been able to work it out after  
23       even their best efforts to do so with the other side or  
24       sides.

25           So, I didn't see the letter as raising any

1 particular issue, and I don't think there's any need to have  
2 anyone respond to it at this point, particularly given the  
3 orders that are on file with the Court. So, I agree with  
4 you. I think we should proceed with the agenda.

5 MR. JOSEPH: Your Honor, Gregory Joseph. If I may  
6 just say one thing -- and I will not address anything you  
7 don't want addressed. The attached stipulation purports to  
8 bind at least a half a dozen parties that were not involved  
9 in the stipulation process to a schedule which we need to  
10 address. But I won't do it at this hearing if Your Honor  
11 would prefer we do it in writing or otherwise.

12 THE COURT: Okay, that's fine.

13 MR. JOSEPH: It's an unworkable schedule. Okay,  
14 thank you, Your Honor.

15 MR. HUEBNER: So, Your Honor, on to the agenda.  
16 The first set of items -- the fee examiner, like many other  
17 people on this case, has been hard and fast at work. They  
18 sent out reports, I believe, to all the professionals  
19 requesting reductions. My understanding is that all the  
20 professional firms then interfaced with the fee examiner and  
21 reached a set of resolutions as to each one. We have  
22 prepared, as we did last time, a form of omnibus order that  
23 reflects all those reductions. (indiscernible) I actually  
24 believe they're all done as of today, so we won't need the  
25 second order for the firms that are not quite done yet.

1 People all hustled in order to meet the needs of the hearing  
2 at the fee examiner's request and worked through them and,  
3 hopefully, that can come and go in (indiscernible) as much  
4 time so say that I think that is now resolved.

5 THE COURT: Well, let me make sure I just  
6 understand. I have -- oh, probably about 20 fee  
7 applications for the Debtors committee and the ad hoc  
8 committee of governmental and other contingent litigation  
9 claims that professional, and they're all in specific  
10 amounts. Some of them reflect voluntary reductions.

11 I'm just not clear from what you just said -- are  
12 -- do those applications reflect already the discussions  
13 with the fee examiner? Or are there ongoing discussions at  
14 least with regard to some of them where the amounts might be  
15 further reduced?

16 MR. HUEBNER: Apologies, Your Honor. The answer  
17 is actually neither.

18 THE COURT: Okay.

19 MR. HUEBNER: The volunteered reductions that were  
20 reflected in the applications were reductions -- I'll speak  
21 for Davis Polk -- we often take a bunch of things off  
22 ourselves long before we file them, just because we figure  
23 that's the right thing to do based on (indiscernible).

24 The fee examiner, several weeks ago, sent his  
25 proposed reductions to all of the professionals. And those

1 issues have now all been worked out and we have a revised  
2 form of order that chambers advised us not to send in in  
3 advance of the hearing that reflects the additional  
4 reductions that have been agreed to between every one of the  
5 professionals and the fee examiner. So, there is no ongoing  
6 dialogue because the dialogue concluded successfully. So,  
7 there is a form of order that we're ready to send in that  
8 reflects additional reductions and is extremely precise  
9 about initial request, fee examiner agreed reductions, you  
10 know, approved amount to be paid, as it did last time --

11 THE COURT: Yes.

12 MR. HUEBNER: It follows a similar grid. But  
13 they're all done now and we're just ready to send in the  
14 order.

15 THE COURT: Okay.

16 MR. HUEBNER: As long as it meets the Court's  
17 pleasure.

18 THE COURT: All right, so I have reviewed each of  
19 the applications and I have my own views on them. I think  
20 probably what it makes sense to do is, in going through each  
21 of them, to state what the agreed amount is or even, if you  
22 can do this, the agreed reduction is, and then I can decide  
23 whether that's within what I would've ordered or not.

24 MR. HUEBNER: Yeah, exactly. And the proposed  
25 order does exactly that, Your Honor, on a firm by firm

1 basis. It's like a big grid. And so what we'll do is we'll  
2 end it in to chambers after the hearing and, hopefully, what  
3 the fee examiner asked for and people agreed to is in line  
4 with what Your Honor had noticed or was thinking. And, if  
5 not, obviously, each of the relevant firms stands ready to  
6 address it in whatever way is appropriate.

7 THE COURT: Well, if we're going to do it that  
8 way, then if I have a problem and think that there should be  
9 a greater reduction, then we'll just contact that firm and  
10 say that, and they have the option, I guess, of either  
11 agreeing to that or we'll have a hearing on it.

12 MR. HUEBNER: Yeah, understood. And, obviously,  
13 as always, Your Honor, Davis Polk, of course, has been doing  
14 the coordinating (indiscernible) of all the professionals  
15 here, and we'll clearly proceed in whatever way the Court  
16 thinks best. And if you'd like us to help coordinate that  
17 with chambers so chambers doesn't have to call two, or  
18 three, or four, or five firms, please just let just know.  
19 We're obviously standing by in a coordination role to help  
20 send everything.

21 THE COURT: Okay. That's fine. So, I guess the  
22 only point I'll make then, given the uncontested nature of  
23 these applications, is to point out three issues that I have  
24 noticed -- maybe the fee examiner has too. It may be that  
25 he's found things that I didn't find and it all comes out in



1 the wash. But I will note them anyway. First, some firms  
2 have spent what appears to me to be an inordinate amount of  
3 time on fee application and monthly billing. Obviously, fee  
4 application preparation is compensable under the Bankruptcy  
5 Code, and it may be that some of the time by some of the  
6 professionals, namely, the committee of Debtor main counsel  
7 is spent not on their own billing and fee application time  
8 but looking at others.

9 But, nevertheless, it appears to me that the time  
10 for many of the firms is excessive in this category. And  
11 maybe that's attributable to the monthly billing, which  
12 normally wouldn't, I think, be that clearly covered by  
13 Section 330, but it's hard for me to tell.

14 The second point is it does appear to me that the  
15 parties are coordinating with each other to avoid  
16 duplication in the investigation and discovery. But I will  
17 note it's a very expensive process. And I just think it's  
18 important for the bankruptcy lawyers to keep an eye on the  
19 litigators and make sure that they understand the difference  
20 between doing due diligence and an examination and taking  
21 discovery for purposes of a trial.

22 The last point is there are some timekeepers who  
23 seem to be billing a set amount of time every day, and that  
24 set amount of time is, in one instance, ten hours a day,  
25 every day of the week, every month. I'm sure this is the

1 type of thing examiners catch but, again, I think it's  
2 important for the bankruptcy lawyers to keep an eye on their  
3 colleagues in other departments to make sure that things  
4 like that don't happen.

5 So, I trust that the examiner's caught those sorts  
6 of things and probably other things as well, including  
7 things like transitory time. You know, people who bill one  
8 hour or half an hour and normally one looks carefully at  
9 those things. Sometimes that half hour is incredibly  
10 important, sometimes it isn't. But I -- the main message  
11 I'm sending out here is that the -- someone fairly senior on  
12 the bankruptcy side for each professional should make sure  
13 that the non-bankruptcy lawyers are doing this work  
14 recognizing the Chapter 11 context of it.

15 But with that said, I'm happy to go by the process  
16 that you suggested, Mr. Huebner. And I, in all likelihood,  
17 will conclude once I see your grid for all the professionals  
18 that the agreed further reductions in light of the  
19 examiner's review are in line with what I had in mind. And  
20 I probably will not reach out to any particular professional  
21 but -- of course, if that doesn't happen, I will.

22 MR. HUEBNER: Yeah, Your Honor, I guess I should  
23 also note -- and, obviously, I'm extemporizing a little bit  
24 here -- of course, we do have a fee examiner.

25 THE COURT: Right.

1 MR. HUEBNER: And so I'm sure the fee examiner  
2 would be delighted to talk to the Court directly. For  
3 example, you know, without (indiscernible) the professional  
4 on the record, if there actually is some lawyer at some firm  
5 who is billing exactly ten hours to Purdue six days every  
6 single week, there certainly -- that would be an anomaly, it  
7 would be extremely difficult to justify. And so that may be  
8 what's happening (indiscernible) the Court wants to talk to  
9 the fee examiner about directly and tell them who it is and  
10 have them --

11 THE COURT: Well, I -- I'm not -- I -- he acts  
12 independently and I have no reason to believe that he's not  
13 acting properly. So, he's probably catching those sorts of  
14 things.

15 MR. HUEBNER: Yes. I can certainly say it to  
16 Davis Polk, Your Honor, just to give one example just in the  
17 interest of candor and helping -- some of those issues like  
18 transitory timekeepers we definitely have discussed. And so  
19 the Court knows, A, we write off a bunch of them ourselves  
20 before we ever file the bills. B, some of them are, in  
21 fact, specialists who we actually need for a highly limited  
22 purpose, and they're the best person in the firm. Some of  
23 them where it's ramp up, ramp off, vacation covers and the  
24 like -- we often do write them off just because, you know,  
25 that sort of business continuity is something the client

1 shouldn't pay extra for. So, those are definitely the types  
2 of issues that have been raised. They have software that is  
3 actually quite precise in catching things. You know, the  
4 number of people at hearings, transitory timekeepers, you  
5 know, things like that. And so, hopefully, the reductions  
6 that the Court sees will be in line with the many tape flags  
7 that Your Honor always has on your black binders.

8 THE COURT: Okay, very well. Thank you.

9 MR. HUEBNER: So, Your Honor, that brings us to  
10 the second item of the agenda, which is actually the NAACP's  
11 motion, not the Debtor's motion. And so I think probably  
12 the right thing to do is to turn the podium over to counsel  
13 for the NAACP. There is a resolution, of course, that the  
14 Debtors helped shepherd among several parties but it's not  
15 my motion. So I will go on mute and turn over the podium.

16 THE COURT: Okay.

17 MS. ORTIZ: Good morning, Your Honor. This is  
18 Norma Ortiz, I'm local counsel to the NAACP.

19 THE COURT: Good morning.

20 MR. BLAUDEAU: Judge, this is Francois Blaudeau.  
21 I'm complex litigation counsel for the NAACP. Appreciate  
22 the opportunity to be put on this motion (indiscernible).  
23 And I note that a number of the parties have filed motions  
24 in support. And as it stands right now, I don't think that  
25 a motion's contested from any of the parties. We believe

1 that -- this is an important step in trying to place some  
2 safeguards through the process and ensure that communities  
3 of color and at-risk communities have a -- more attention  
4 through the process to try to ensure that we get better  
5 outcomes than what we historically have seen in the past.

6 I can go on ad nauseam about many of the different  
7 national settlements going as far back as the tobacco  
8 settlement in 1998, where the trickledown effect to  
9 communities of color and at-risk (indiscernible) was very  
10 poor. Studies have been done showing that as low as 10  
11 percent of funds that were supposedly going to those  
12 communities made it to those communities.

13 And so this is -- the opioid crisis is a crisis  
14 that affects large areas of the country and affects certain  
15 areas differently. And so we think this is a very important  
16 process -- we think it's very important for the NAACP, which  
17 has a national footprint, to be able to come in and at least  
18 participant in giving some ideas in trying to push the  
19 parties to have a better overall agreement. And we look  
20 forward to the opportunity to help impact or influence the  
21 negation process, which we're actively in the process of  
22 doing now. And also the opportunity to talk to the Court  
23 down the road about some of the issues that we think are  
24 important. And I'm glad to answer any questions that you  
25 may have of us. And I'll leave it at that.

1 THE COURT: Okay. And I have reviewed the  
2 stipulation and proposed order -- the proposed order  
3 stipulation, which would resolve this motion. That would be  
4 the only order that would be submitted, correct?

5 MR. BLAUDEAU: Yes, sir, Judge, I think that's the  
6 only order that's due to be submitted. And we've all been  
7 working hard with the parties, and I want to commend the  
8 parties that are involved through the process. They have  
9 been collaborative with our (indiscernible) supported. And  
10 I do think this is an important step in the right direction.  
11 So, you're actually correct, Judge, this is -- it's my  
12 understanding this is the only motion to deal with it -- the  
13 only documented stipulation to deal with all of the issues  
14 related to the NAACP.

15 THE COURT: Okay. All right. I have reviewed the  
16 statement filed in connection with this motion. There's no  
17 opposition to the motion. The stipulation would resolve it  
18 on the terms laid out in the stipulation and I'm prepared to  
19 so order the stipulation, which, in a focused way, which is  
20 certainly what I would expect from the NAACP and the other  
21 parties to the stipulation, provides for the NAACP's  
22 participation in the ongoing mediation.

23 It also makes it clear that it wouldn't delay the  
24 mediation but, again, given the resources available to the  
25 NAACP and the already -- the preliminary information showing

1 that the stipulation provides for, I think that there's  
2 sufficient time for the NAACP to make it known to the  
3 parties and the mediators. So, I'll ask the Debtors to  
4 email the stipulation to chambers.

5 MR. BLAUDEAU: Thank you, Judge, we appreciate it.  
6 And we look forward to looking with all the parties to get a  
7 really good solution for everyone.

8 THE COURT: Okay.

9 MS. ORTIZ: Thank you, Your Honor.

10 THE COURT: All right, very well.

11 MR. HUEBNER: So, Your Honor, that brings us to  
12 the third item on the agenda, which is the Collegium, which  
13 as the Court may remember was (indiscernible) from the last  
14 hearing.

15 I should apologize. There is a lot of background  
16 noise and feedback, so if people wouldn't mind terribly  
17 checking their mute buttons I think that would be wonderful.  
18 Let me turn the podium over to Chris Robertson.

19 THE COURT: Okay.

20 MR. ROBERTSON: Thank you, Marshall, and thank  
21 you, Your Honor. For the record, Christopher Robertson,  
22 Davis Polk & Wardwell, on behalf of the Debtors. Can the  
23 Court hear me clearly?

24 THE COURT: Yes, fine, thanks.

25 MR. ROBERTSON: Thank you, Your Honor. The final

1 items on today's agenda are two motions for relief from the  
2 automatic stay. Item number 3 is the Debtor's motion for a  
3 stay relief to continue a pending patent infringement  
4 lawsuit in the Massachusetts District Court. Item number 4  
5 is the motion of Collegium Pharmaceutical, Inc. for relief  
6 from the automatic stay with respect to an action before the  
7 Patent Trial and Appeal Board, the PTAB, seeking  
8 determination that one of the patents at issue in the  
9 Massachusetts litigation is invalid. Because the matters  
10 are closely related, we propose to address these two motions  
11 concurrently.

12 At a high level, Collegium requests that this  
13 Court either lift the automatic stay with respect to both  
14 the Massachusetts action and the PTAB action or neither,  
15 while the Debtors seek to relief -- to lift the stay on the  
16 Massachusetts action but object the stay relief with respect  
17 to the PTAB action.

18 The Debtors disagree with Collegium because they  
19 believe that the PTAB action is terminated based on the  
20 passage of the deadline for the PTAB to issue any final  
21 decision. In other words, there is no live PTAB action.  
22 Collegium suggested that the stay should be lifted to allow  
23 the PTAB to address the question of whether the action  
24 terminated or not. The Debtors believe this would be  
25 inefficient.



1           If the PTAB is asked to consider whether the PTAB  
2           action is terminated, its decision will likely hinge on the  
3           matters of bankruptcy law and, in particular, the  
4           application of sections 362(a) and 108(c) and may be unable  
5           or unwilling to decide the matter without input from this  
6           Court.

7           The Debtors believe that this Court may and should  
8           consider the merits of the parties' bankruptcy law arguments  
9           in ruling on the merits of the list they request and submit  
10          that even in the event that this Court is inclined to permit  
11          the PTAB action to proceed, this Court's views on -- this  
12          Court's views on what the dispositive questions of  
13          bankruptcy law could assist the PTAB in efficiently reaching  
14          a decision regarding the continued existence of the PTAB  
15          action without referring the matter back to the Bankruptcy  
16          Court.

17          Your Honor, I would like to very briefly summarize  
18          why the Debtors believe the PTAB action is terminated and  
19          address four points raised in Collegium's response to the  
20          Debtor's objection. I am, of course, more than happy to  
21          address any questions at any time.

22          So, fundamentally, the PTAB action terminated  
23          because Collegium failed to seek relief from the automatic  
24          stay from this Court before the expiration of the deadline  
25          set by the PTAB to issue its final written decision.

1 Collegium was not barred from seeking this relief by the  
2 automatic stay, of course. It simply chose not to follow  
3 the direction of the PTAB. Generally, under its governing  
4 statute, referred to as the AIA, the PTAB must issue a final  
5 written decision within one year of instituting post-grant  
6 review so that period may be extended by up to six months  
7 for good cause shown.

8 Collegium initially took the view that the PTAB  
9 action was not subject to the automatic stay. However, the  
10 PTAB issued -- instituted its own temporary stay at Perdue's  
11 request. When the PTAB issued its order staying the PTAB  
12 action on October 2, 2019, the statutory deadline for the  
13 PTAB to issue the final written decision was two days away.  
14 The stay order extended that deadline by six months to April  
15 6th, which was the maximum extension permitted under the  
16 AIA.

17 The PTAB was very clear as to what this extension  
18 meant. It was an extension of the time to administer the  
19 present proceeding. And also about why the extension was  
20 warranted -- so that Collegium could seek relief from the  
21 Bankruptcy Court to determine whether the automatic stay  
22 applied.

23 Whether the PTAB was instructing Collegium to seek  
24 stay relief or simply laying out the consequences of  
25 inaction is of no moment. Collegium failed to act. The

1 April 6, 2020 PTAB deadline passed. And the time to  
2 administer the PTAB action under the AIA expired. Again,  
3 Collegium was not stayed from taking the one key step it was  
4 required to take to maintain the PTAB action: Seeking  
5 relief from the automatic stay from this Court. So, the  
6 Debtor's fundamental theory of why the PTAB action  
7 terminated is quite simple, and is grounded in the text of  
8 the PTAB stay order and the AIA.

9 Here, Your Honor, I would turn to Collegium's  
10 reply to the Debtor's objection to the pleading filed on  
11 Monday to address just four points. At the risk of burying  
12 the lead, the interplay between the PTAB deadline and  
13 sections 362(a) and 108(c) of the Bankruptcy Code is the  
14 fourth and final point, Your Honor.

15 First. The Debtors are not, as Collegium alleges  
16 in paragraph 6 of their reply, implying that the stay did  
17 not apply, nor are the Debtors somehow prevented, as  
18 Collegium suggests in paragraph 7, from arguing that  
19 Collegium should have sought relief from the automatic stay  
20 before the April 6 PTAB deadline. The Debtors are simply  
21 expressing their understanding of the stay order.

22 Second. Collegium believed that lifting the stay  
23 with respect to the District Court litigation and not the  
24 PTAB action is, quote, "The least efficient outcome." The  
25 Debtors agree that it would be proper to lift the stay with

1 respect to both proceedings if the PTAB action still  
2 existed. But this Court might also determine that the  
3 likelihood of the PTAB action continuing to exist is so low  
4 that the District Court litigation should move forward, and  
5 litigating the existence of the PTAB action at this juncture  
6 would only cause unnecessary distraction and expense.

7 In that case, lifting the stay with respect to the  
8 PTAB action would not satisfy certain of the Sonnax factors,  
9 most notably the 10th factor, whether in the interest of  
10 judicial economy and the expeditious and economical  
11 resolution of litigation would be served.

12 Third. Collegium argues that the PTAB and not  
13 this Court should consider and decide whether the PTAB  
14 action still exists. Indeed, Collegium does not address the  
15 substance of the Debtor's stay order argument at all.  
16 Respectfully, the Debtors believe that this Court may  
17 consider the merits of all of the arguments advanced in  
18 support of or against the existence of the PTAB action and  
19 that they, at the very least, inform any decision regarding  
20 whether lifting the automatic stay with respect to the PTAB  
21 action at this time is in the interest of judicial economy.

22 More importantly, as mentioned earlier, were it to  
23 take up the question of whether its proceeding has or has  
24 not terminated, the PTAB would almost certainly seek the  
25 guidance of this Court as to the dispositive questions of

1 bankruptcy law, as it did when the question of the  
2 applicability of the automatic stay was raised.

3 Fourth and finally, Collegium argues that because  
4 the PTAB action was stayed under 362(a), any deadline by  
5 which the PTAB had to issue its final written decision,  
6 whether under its own stay order or under 326(a)(11) of the  
7 AIA, was told, interestingly, in its initial response to the  
8 Debtor's lift-stay motion, the response at docket number  
9 1463 -- Collegium argued that section 362(a) and section  
10 108(c) of the Bankruptcy Code together operate the total and  
11 extend all deadlines in all matters subject to the stay.

12 Collegium is correct that section 108(c) generally  
13 extends statutory deadlines in matters subject to the 362(a)  
14 stay, however, as the Debtors argue in detail in their  
15 objection, section 108(c) does not apply to administrative  
16 proceedings such as the PTAB, and does not apply to a  
17 deadline established to seek relief from the automatic stay  
18 from this Court.

19 In paragraph 22 of the subsequent replay,  
20 Collegium dismisses the Debtor's argument that 108(c) does  
21 not apply to PTAB as an appeal to the, quote, "legislative  
22 history". But, of course, it is nothing of the sort. It is  
23 a straightforward analysis of the plain text of the statute.

24 Collegium further attempts to pivot away from its  
25 own reliance on section 108(c), calling it a, quote, "red

1 herring" and arguing that the word continue in section  
2 108(c) means commencing an appeal. Collegium offers no  
3 support for such an unnaturally narrow understanding of the  
4 word continue, a word that has a naturally broad meaning.

5 Rather, Collegium argues now that because the  
6 purpose of section -- of section -- because the purpose of  
7 section 362(a)(1) is to, quote, "Preserve the status quote  
8 in a state matter," section 362(a) itself totals any and all  
9 deadlines, quote, "Both statutory and non-statutory" in such  
10 a proceeding.

11 Collegium offers no support for this position  
12 because there is none. Section 362 itself is not called  
13 statutory deadlines. If it did, section 108(c), which  
14 again, does not apply here, would be entirely superfluous.  
15 It is certainly true that the imposition of the stay  
16 generally preserves the status quo and suspends activity.  
17 As Collegium notes in the example they provide in their  
18 reply, the imposition of the stay would, for instance,  
19 suspend the obligation of a Debtor to file an answer.

20 However, that section 362(a) might reset a case  
21 calendar does not mean that it operates in total statutory  
22 deadlines or the total deadlines established to seek relief  
23 from the automatic stay. It does not, and Collegium offers  
24 no authority to the contrary.

25 As discussed previously, the Debtors believe that

1 this Court can evaluate the application of the Bankruptcy  
2 Codes PTAB when evaluating whether granting the relief  
3 requested by Collegium furthers the interest of judicial  
4 economy. In addition, even if this Court finds that lifting  
5 the automatic stay with respect to the PTAB action is  
6 warranted, the Debtors believe that the PTAB would benefit  
7 from this Court's views with respect to section 362(a) and  
8 108(c) in the context of such a ruling.

9 The Debtors believe that it would be in no party's  
10 interest to have the matter sent to the PTAB only to have  
11 that panel send questions of bankruptcy law back to this  
12 Court, much as the PTAB attempted to do in the context of  
13 the stay order.

14 At this time, Your Honor, I would ask Your Honor  
15 if Your Honor has any questions. Otherwise, I will cede the  
16 podium to Mr. Gautier.

17 THE COURT: Okay. Very well. That's fine,  
18 thanks.

19 MR. ROBERTSON: Thank you. Thank you, Your Honor.

20 MR. GAUTIER: Your Honor, this is Scott Gautier  
21 with the rep firm of Robins Kaplan. I would note that my  
22 partner Jake Holdreith, also with Robins Kaplan, is also on  
23 the line. I'll give the main arguments but I will note that  
24 -- I guess if I slip in terms of patent law, Mr. Holdreith  
25 will maybe come in and correct me.

1 I would (indiscernible) a very brief rebuttal  
2 before I get into my main arguments with respect to some of  
3 the things that Mr. Robertson presented. The Debtor here  
4 tries to get the Court to interpret the PTAB order, and I  
5 think that we can all, as seasoned lawyers, accept the fact  
6 that the PTAB will interpret its own order. Certainly if  
7 it's instructive, this Court will look at it and draw  
8 conclusions. But I would certainly argue, Your Honor, if  
9 you'd like, at the end of this as to whether or not this  
10 Court should take steps to interpret the PTAB's order.

11 The Debtor suggests, in its argument this morning  
12 as well as in its paper, that there is some deadline for  
13 Collegium to act. And as we'll get into and we'll talk  
14 about throughout our comments and our papers, 35 -- the  
15 statute that we're talking about here is 35 USC 326(a)(11).  
16 That's the statute that provides a deadline for the PTAB to  
17 act. And I want us to keep that point clear in our minds.  
18 That 35 USC 326(a)(11) sets a deadline for the PTAB to take  
19 action.

20 This notion that after the automatic stay came  
21 into being on the petition date, and having given notice of  
22 the stay and compelled all parties to comply with the  
23 automatic stay, the Debtors certainly cannot argue that the  
24 automatic stay does not apply, and I would say that all we  
25 need to do is look at 362(a)(1) and we all know that the



1 automatic stay applies to stop the employment of the process  
2 in the administrative proceeding, which was the PTAB action.

3 So, that employment process stopped by its own  
4 terms on the petition date. Now, not every court is as  
5 savvy as the Bankruptcy Court or the bankruptcy lawyers that  
6 are here, and courts sometimes hold proceedings and question  
7 people and parties in connection with those proceedings  
8 after they're given notice of the automatic stay. As we all  
9 know as bankruptcy lawyers, those proceedings are mostly  
10 irrelevant and superfluous.

11 Those courts do not need to pass on whether or not  
12 the automatic stay applies. And the stay, having been  
13 applied, those courts lack any power to require the parties  
14 to do anything -- not only under the automatic stay, but the  
15 PTAB doesn't have the authority -- any authority to require  
16 Collegium to come to this court, and it can't set a deadline  
17 for Collegium to come to this court and take action. Okay?

18 So, we have this illusory deadline that, by the  
19 way, does not appear on the face of the PTAB order, and that  
20 the Debtors would like to say the PTAB set for Collegium.  
21 The PTAB can let us know when we get over to the PTAB  
22 whether or not they intended to set it, and we'll let them  
23 know that they didn't have the power to act under 362(a) --  
24 the power to set deadlines. Not only that, they didn't have  
25 the power to set deadlines to require Collegium to do things

1 with the Bankruptcy Court.

2 So, what we're left with is the deadline that  
3 arises under 35 USC 326(a)(11) and by (indiscernible)  
4 deadline, the Debtors want to make an argument that somehow  
5 the PTAB action terminated, and that is the second big  
6 (indiscernible) in all of this argument by the Debtors.  
7 There is no basis for the Debtor's false argument, which  
8 appears in other places as well as implied in other places,  
9 but appears quite clearly on page 6 and 7 -- it's on the  
10 bottom of 6 and 7 of its reply -- that the PTAB would be  
11 acting contrary to statute if it issued a final written  
12 decision after the expiration of the PTAB deadline.

13 And the statement is sort of buried in the reply  
14 but it's implied throughout and it's false. And that very  
15 falseness is why we have to recognize that the stay applies  
16 for the benefit of the people, right? The PTAB may not  
17 extinguish an action once institute, and there's nothing in  
18 35 USC section 326(a)(11) to even suggest that the passing  
19 of the deadline would terminate the actions. And it would  
20 be absurd and unfair to interpret a statutory deadline that  
21 creates an obligation for the PTAB to act and then to say  
22 that the consequence of the PTAB to act would be to relieve  
23 the PTAB of that very obligation for the Debtors and parties  
24 of interest. No.

25 The statutory decision, what we call the decision

1 date, right, has no substantive effect on the PTAB's mandate  
2 or on the continuation of its proceeding. It doesn't apply  
3 anywhere textually or impliedly in the statute, and for  
4 those familiar with PTAB actions, they tell me that it  
5 doesn't apply anywhere -- or it doesn't exist anywhere.

6 The passage of the deadline nor anything  
7 terminates a PTAB action. Rather, the only effect of the  
8 passage of the decision date is to create a right for the  
9 parties in interest to bring an action in the District Court  
10 to (indiscernible) PTAB to issue a decision on and after  
11 that decision date. And this is the point, Your Honor, that  
12 was illustrated very clearly in our initial (indiscernible)  
13 by the Forest Guardian case, which (indiscernible) Debtors  
14 strongly feel that the Debtors misconstrue that case in  
15 their reply.

16 We would've loved to cite a PTAB decision that  
17 illustrated the fact that once you pass the deadline, you  
18 compel the PTAB to act, but the PTAB, to the best of our  
19 knowledge, from everything we've seen, has never failed to  
20 issue a decision by the decision date and so there is no  
21 cases that we can cite to. But the relevance of Forest  
22 Guardian is clear. It highlights the effect of an agency  
23 missing its statutory deadline.

24 The statute in Forest Guardian is exactly parallel  
25 to the PTAB (indiscernible). It creates a deadline, it

1 compels action by a date certain of the government agencies  
2 that's been given a particular statutory obligation. Now,  
3 in Forest Guardian, that was the Secretary of the Interior,  
4 right? But the statute (indiscernible) parallel and it  
5 serves the same purpose and it has the same effect. Prior  
6 to the deadline, the agency may -- or any extension that the  
7 agency may grant itself, the parties in interest may not  
8 compel immediate action.

9 Hence, in the absence of the automatic stay, if  
10 the PTAB had failed to issue a written decision, Collegium  
11 could have compelled the PTAB to act. Really, what the  
12 Debtors are -- maybe not what they're arguing for, but the  
13 effect of their argument would be to say that the PTAB had  
14 no power to act but that the deadline still existed and,  
15 therefore, Collegium or the Debtors could (indiscernible)  
16 held the PTAB date.

17 So, when we talk about a deadline, we refer to a  
18 temporal component of an obligation, right? A deadline  
19 indicates that someone has to do something by a date certain  
20 and implies some consequence, even if not expressly stated.  
21 And here, that deadline required the PTAB to act. So the  
22 Debtors can't say, which they do in their papers, that the  
23 PTAB was relieved from action by 362(a)(1) but that the  
24 deadline, which is the temporal component of that  
25 obligation, was not suspended. That is a semantical

1 nonsensical argument. If you are stopped from acting, if  
2 the stay has the power to stop you from taking action, then  
3 the stay has the power to say that you don't have to act by  
4 a time certain.

5 So, we don't disagree with the Debtors, and I  
6 don't think anybody could disagree with the Debtors. Now,  
7 the PTAB was foreclosed from action. The deadline applies  
8 to the PTAB, the deadline requires the PTAB to act by a date  
9 certain, and the automatic stay relieved them of that  
10 obligation to act by a date certain.

11 I would note that, while I don't want to get into  
12 it, I don't think this Court should interpret the PTAB's  
13 order. We'll let the PTAB do that itself. But what the  
14 PTAB order did was to extend its own deadline. That may  
15 very well have been actually in violation of the stay, and  
16 it was mostly superfluous because the stay already relieved  
17 the PTAB of its obligation to act.

18 But in any event, it gave Collegium the  
19 opportunity to seek relief from the stay if it wanted to,  
20 and if it wanted to get a decision and be able to compel a  
21 decision before the extended date. But, again, there is  
22 nothing in PTAB's statutes, there's certainly nothing in 35  
23 USC 326(a)(11) that terminates a proceeding. And I think  
24 that the Court making any hint that the proceeding is  
25 terminated would interfere with and would (indiscernible)

1 PTAB and it would be inventing cause and it would be writing  
2 statutes that simply don't exist.

3 The PTAB will interpret its own order. There's no  
4 support -- but there's no support for the argument that the  
5 PTAB created some obligation or some deadline that didn't  
6 previously exist because of the Debtor's bankruptcy. The  
7 PTAB has no authority to require Collegium to remove the  
8 stay. The PTAB has no authority to (indiscernible) its own  
9 proceedings for any reason. The sole effect (indiscernible)  
10 it's deadline is the creation of a right to compel in the  
11 parties in interest.

12 We strongly also disagree with the Debtors, Your  
13 Honor, that the PTAB would want this Court to interpret the  
14 effect of the automatic stay on deadlines that require the  
15 PTAB to act. We're not talking (indiscernible) lines, as we  
16 do in a lot of these cases where we would -- Collegium would  
17 come and say, Your Honor, we want to define that the  
18 automatic stay relieve Collegium of its obligation to act.  
19 There is no obligation to act. There's nothing in the  
20 Bankruptcy Code that requires a creditor to move for relief  
21 from stay. In fact, as we go to some lengths in our reply  
22 to the state, Bankruptcy Courts and the bankruptcy system as  
23 a whole would prefer that creditors comply with the stay,  
24 which is what Collegium did here.

25 The deadline at issue compels the PTAB to act

1 (indiscernible) the automatic stay prohibits  
2 (indiscernible). If the Bankruptcy Court rules that the  
3 PTAB, that the deadline was not suspended, that's saying  
4 that PTAB had this obligation -- that's what the deadline  
5 means -- but was powerless to meet the deadline. I think  
6 the PTAB would be confused by any such order and I don't  
7 believe that the PTAB would ask the Bankruptcy Court to find  
8 that it was both powerless to act and had an obligation to  
9 act by a date certain.

10 What the Debtors are asking this Court to do in  
11 reality is to find that Collegium somehow had an obligation  
12 to seek relief from stay. And while they're -- and they're  
13 going about it in this end run by saying, well, you're just  
14 interpreting the Bankruptcy Court, you're doing a favor for  
15 PTAB, but that's not true. I think it's a little  
16 disingenuous. I don't want to be uncivil, but I think it's  
17 a bit disingenuous. Because the effect of any such advisory  
18 opinion that this Court clearly (indiscernible)...

19 As well, Your Honor, as I've said a thousand times  
20 now, the deadline in 35 USC creates an obligation for the  
21 PTAB. If the Court is to (indiscernible) on whether the  
22 PTAB remains subject to that deadline, I think, if anything,  
23 the PTAB would like to be here to speak for itself as to  
24 whether the deadline is (indiscernible). But that's really  
25 unnecessary. Because all that's necessary -- and this is

1 very simple -- is there's two actions, they are connected,  
2 the District action and the PTAB action, the PTAB acts and  
3 exists for the judicial efficiency of the District Court,  
4 right? The District Court has, in effect, stayed its  
5 proceedings waiting for the PTAB to act. If the PTAB  
6 doesn't act, the District Court has to do what the PTAB  
7 doesn't do, which is rule upon the validity of the patent.  
8 It's an issue that's a necessary (indiscernible)...

9 And so there's no benefit to keeping the PTAB  
10 action to date. I don't think that it would be appropriate  
11 under the doctrine applied to the automatic stay to keep one  
12 action stayed and another necessary part of that action not  
13 stayed. And it is the simplest thing for the PTAB to  
14 determine what to do with respect to its opinion. There's  
15 nothing that would permit the PTAB to terminate its own  
16 proceeding. There's nothing that would permit the PTAB not  
17 to issue a decision whether the parties want to go to the  
18 District Court and try to enforce the deadline. If the  
19 Debtors don't believe the deadline was suspended, they can  
20 go to District Court and enforce the deadline. They can go  
21 to District Court and say, Your Honor -- you know, District  
22 Court, PTAB didn't act by the deadline. We now have the  
23 right to compel them to act.

24 What the Debtor (indiscernible) do is go to the  
25 District Court and say -- I mean, they (indiscernible) --



1 but there would be no (indiscernible) for it -- is to say  
2 that the proceeding is terminated. There's no basis to say  
3 that the PTAB action is terminated. Being very redundant, I  
4 will end my comments there, Your Honor, but I'm happy to  
5 answer any questions regarding the briefs or  
6 (indiscernible)...

7 THE COURT: Well, let me ask you, do you agree  
8 that if it were determined that the PTAB did set a deadline  
9 for Collegium to act and that deadline has passed, that the  
10 mere fact of the automatic stay would not relieve Collegium  
11 of the deadline imposed on Collegium? I'm not asking you to  
12 accept that such a deadline was imposed on Collegium but do  
13 you agree that if it had been, that the automatic stay would  
14 not toll that deadline?

15 MR. GAUTIER: I think the answer is no, I would  
16 not agree, Your Honor. And I would not agree because as of  
17 the petition date, the employment of process in the  
18 administrative action was stayed. The PTAB did not have --  
19 not only does the PTAB not have authority, which is not the  
20 question you're asking -- the PTAB doesn't have authority to  
21 put deadlines or to require Collegium to do anything.  
22 However, even if it did, it would not be permitted after the  
23 petition date to employ process in the case and require  
24 either the Debtors or the other parties to the action.

25 I'm sure this Court would find that if PTAB, after

1 the petition date, ordered the Debtors to do anything --  
2 cross the road, you know, I'm being... But if they ordered  
3 the Debtors to do anything, that would be a violation of the  
4 stay and it would be void. By the same token, if the PTAB  
5 purported to force Collegium to do anything, it would be a  
6 violation of the stay and it would be void. So, I would  
7 disagree that there could be any deadline set by the PTAB  
8 for Collegium to act (indiscernible) ...for Collegium to act  
9 (indiscernible) ...petition date.

10 THE COURT: Okay. All right. Anything else from  
11 either side?

12 (Overlapping)

13 MR. BASS: I apologize. Go ahead.

14 MAN 1: No, no, apologies. Go ahead.

15 MR. BASS: No, I should've came in a little  
16 earlier with the NAACP. My name is Ronald Bass and I'm --

17 THE COURT: Well, Mr. Bass, I've already ruled on  
18 that and I'm deep in the middle of another matter that's on  
19 the calendar.

20 MR. BASS: Oh, I'm sorry.

21 THE COURT: I granted the motion on a stipulated  
22 basis, so an order will be entered that the parties have all  
23 agreed to with respect to that motion.

24 MR. BASS: Oh, okay. So when should I --

25 THE COURT: Including the NAACP.

1 MR. BASS: Okay, so should I wait for the NAACP to  
2 make a motion of filing the other paperwork or shall I --

3 THE COURT: No, they don't need to make -- they  
4 don't need to make any further motion. I have an order that  
5 I will be signing that they agreed to, along with the  
6 Debtors and other parties in the case, that resolves that  
7 motion and lets the NAACP participate in the mediation.

8 MR. BASS: Okay, that's -- the mediation -- you'll  
9 set a date -- when will the date be for that?

10 THE COURT: It's all -- it's all covered -- if you  
11 look on the docket, it'll probably be entered today or  
12 tomorrow. So, you can read the stipulation then and see the  
13 timing.

14 MR. BASS: Okay. And I apologize for interjecting  
15 but I should've spoke up then when they spoke after the --  
16 Ms. Ortiz. All right, so should I just --

17 THE COURT: Just go online and --

18 MR. BASS: Okay, then thank you.

19 THE COURT: Okay. All right. So, anyway, I was  
20 asking the parties on the Collegium matter if they had  
21 anything more to say on this matter.

22 MR. ROBERTSON: Your Honor, Christopher Robertson  
23 on behalf of the Debtors. Just very briefly. I think Mr.  
24 Gautier suggested that the PTAB could not set the PTAB  
25 deadline. You know, that it would be antithetical to the

1 automatic stay to do so. We think that the PTAB did have  
2 the authority to set a firm deadline under the AIA  
3 especially in light of the fact that it was -- as we say in  
4 our papers, it was unclear if there was a dispute as to  
5 whether the automatic stay existed at all.

6 You know, I think there's been a lot of discussion  
7 about whether the PTAB could then instruct Collegium to go  
8 back to the Bankruptcy Court. I think that's a bit of a red  
9 herring, as it were. I think the PTAB could certainly lay  
10 out the consequences if Collegium chose not to go back to  
11 the Bankruptcy Court to seek stay relief. And, again,  
12 Collegium was not stayed from seeking that relief from the  
13 Court.

14 You know, likewise, we think that the passage of  
15 the PTAB deadline did cause the PTAB to terminate. We agree  
16 with Collegium that this is an issue (indiscernible) first  
17 impression. We're not aware of cases either where the PTAB  
18 failed to issue an opinion with an 18-month statutory  
19 period. However, we think the Forest Guardian case is not  
20 directly applicable because the failure to issue the opinion  
21 would not be in violation of the AIA.

22 And then, finally, the last thing I would say is  
23 there are a lot of bankruptcy law issues wrapped up in this  
24 matter. Whether 362 or 108 would extend the PTAB deadline  
25 and, frankly, whether 362 would have affected the PTAB's

1 ability to issue the stay order and the form that it did in  
2 the first instance, we think it is entirely possible and  
3 likely that the PTAB would seek this Court's guidance. In  
4 fact, they already did it or attempted to do it once in the  
5 context of the stay order, and so, you know, that is one of  
6 the reasons why we're putting this matter before you today.  
7 And with that, I would -- I would stop speaking.

8 THE COURT: Okay. Very well. All right, I have  
9 two motions before me. The first is a motion by the Debtors  
10 in this case for relief from the automatic stay under  
11 section 362(b) of the Bankruptcy Code to pursue prepetition  
12 patent litigation in District Court in Massachusetts.

13 The other parties of that litigation, Collegium,  
14 objected to the motion in part contending that the stay, if  
15 it were to be lifted, should also be lifted with respect to  
16 a proceeding that also commenced prepetition pertaining to  
17 one of the patents that was covered in the District Court  
18 litigation, which proceeding was pending before the Patent  
19 Trial Appeal Board or the PTAB.

20 The opposition by Collegium did not end with its  
21 objection to the Debtor's motions. Collegium then filed its  
22 own motion for relief from the stay to permit the PTAB  
23 proceeding to continue, including the issuance of a decision  
24 by the PTAB which had -- it appears, would be ready to be  
25 issued without taking into account any issues created by the

1 bankruptcy case or the automatic stay.

2           The Debtor agrees that, under normal circumstances  
3 but for the issue that I will discuss in a moment, its stay,  
4 in fact, should be lifted or would be properly lifted not  
5 only with respect to the District Court patent litigation  
6 but also to the PTAB proceedings. And I agree with that  
7 view under the controlling case in this circuit, in re:  
8 Sonnax, 907F2d, 1280 (2d Cir. 1990). The overarching  
9 consideration of the -- Sonnax factors pertaining to a  
10 special tribunal with necessary expertise established to  
11 hear the cause of action -- the interests of judicial  
12 economy and the expeditious and economical resolution of  
13 litigation, including the well-developed status of the PTAB  
14 proceeding and the lack of interference with the bankruptcy  
15 case. Normally one would lift the stay not only with  
16 respect to the District Court action but also the PTAB  
17 action.

18           And that reflects also Congress' determination to  
19 permit, as was the case here, the District Courts to stay  
20 their patent litigation pending the prompt determination  
21 within the timeline set by Congress of discrete patent  
22 issues by the Patent Trial and Appeal Board.

23           The reason that the Debtors argue that,  
24 notwithstanding all of the foregoing, I should not lift the  
25 automatic stay pertaining to the -- or as it applies to the

1 PTAB proceeding, is the Debtor's view that given the  
2 applicable statute and, more specifically, 35 USC section  
3 326(a)(11), which has a time limitation in it; and as,  
4 importantly, the order of the PTAB itself dated October 2,  
5 2019, the Debtors contend that as a condition to extending  
6 its own 12-month deadline, the additional permitted six  
7 months under the relevant statute and regulations, PTAB  
8 contemplated that well within that deadline so as to enable  
9 it to issue a decision on the merits by the expiration of  
10 its statutory deadline for doing so -- Collegium would  
11 obtain relief from the automatic stay so that the PTAB  
12 could, in fact, act. It's undisputed that PTAB did not  
13 actually seek relief from the automatic stay to do so until  
14 after that period ran.

15 Thus, the Debtors contend that there would be no  
16 purpose served in lifting the automatic stay because, as  
17 they contend, the PTAB's ability or authority to issue a  
18 decision now that it is outside the deadline would have  
19 terminated or, alternatively, Collegium would be precluded  
20 since it acted outside of a deadline set by the PTAB from  
21 obtaining any result before the PTAB on this matter, and  
22 therefore lifting the stay would be wasteful and unwarranted  
23 because it would lead to no result other than enabling  
24 Collegium to argue that no deadline applied or it is  
25 relieved of its deadline.

1 Collegium argues to the contrary that, first, no  
2 deadline was set by the Patent Trial Appeal Board and,  
3 moreover, no deadline applies to the Patent Trial Appeal  
4 Board that would preclude it from actually issuing a ruling.  
5 In essence, the motion for relief of the stay and the  
6 objection to the Debtor's motion, both argue that, to the  
7 contrary, the PTAB didn't set a deadline and as a statutory  
8 matter, PTAB has authority under the statute to issue a  
9 decision and, in fact, is required to do so even if the time  
10 for issuing a decision as laid out in the statute has  
11 expired.

12 The Debtors have a fallback position, which is  
13 that if I did lift the stay, I should at least rule on  
14 bankruptcy related issues raised by Collegium in its motion  
15 and in its objection to the Debtor's motion. Namely,  
16 Collegium contends that the automatic stay suspended or  
17 tolled the running of any deadline under the applicable non-  
18 bankruptcy statute. And, further, that because of the  
19 automatic stay the PTAB did not have the authority, without  
20 either it or some entity obtaining relief from the automatic  
21 stay, to impose a deadline as a condition to extending its  
22 own deadline on Collegium to act.

23 It is clear to me from reading the parties'  
24 pleadings and from oral argument today that there are  
25 certain issues that the Debtor would wish me to decide that



1     pertain to the so-called bankruptcy issues raised in its  
2     pleadings; that I should instead defer to the PTAB to  
3     decide. On the other hand, I believe that, particularly  
4     given the answer I was given in oral argument to my question  
5     as Collegium's counsel I should make it clear upon which  
6     condition I am lifting the automatic stay to permit the PTAB  
7     proceeding to go forward. And that is a couple of issues  
8     that clearly are not the two issues in my decision -- would  
9     not tread on the toes of PTAB in interpreting its own  
10    statute and the nature of its own authority as either a  
11    court or acting in a civil action or, alternatively, as an  
12    administrative body that would not fit into those two  
13    concepts.

14           Let me be a little more clear on that. First,  
15    I've reviewed PTAB's orders on this matter. It is clear to  
16    me that, first, PTAB did extend, as it has authority to do  
17    under its statute, its time to rule in order for there to be  
18    clarification as to whether it has authority to rule under  
19    the Bankruptcy Code. However, it also determined -- and  
20    this was the safest course for it to do so -- that because  
21    it would be ruling with regard to whether the Debtor had an  
22    interest in the patent or not that was enforceable, that  
23    section 362(a)(1) and (a)(3) of the Bankruptcy Code applied  
24    to the issuance of its decision on the merits.

25           It had jurisdiction to do so. The Bankruptcy

1 Court does not have exclusive jurisdiction to determine  
2 whether the automatic stay applies to a particular matter.  
3 What it does have jurisdiction to decide is whether the  
4 other non-bankruptcy forums' decision that the automatic  
5 stay doesn't apply was, in fact, itself correct or a  
6 violation of the automatic stay, in which case the  
7 Bankruptcy Court can determine that it was void ab initio.  
8 But, of course, here when one reads the PTAB's decisions, it  
9 was clear that PTAB concluded that the automatic stay did  
10 apply to the issuance of its decision under 362 (a) (1) and  
11 (a) (3) and, therefore, it extended the time for it to grant  
12 that decision or issue that decision the full amount of time  
13 that it is authorized to do so under its statute. The clear  
14 implication being that that would give the parties, likely  
15 Collegium but either party, opportunity to get relief from  
16 the automatic stay in the Bankruptcy Court. Again, that  
17 request did not happen until after the extension of the  
18 deadline expired.

19 The Debtors contend that given the foregoing, the  
20 expiration of the deadline would render my lifting the  
21 automatic stay and the PTAB proceeding an unnecessary or  
22 useless act because there would be no relief that could be  
23 obtained by Collegium in that proceeding. They correctly  
24 point to the underlying proposition that it is clear in the  
25 Second Circuit and, frankly, this is the vast majority view

1 throughout the country, that the automatic stay itself does  
2 not suspend or toll the running of non-bankruptcy law  
3 deadlines or statutes of limitation except in one specific  
4 way, as set forth in 11 USC section 108(c). See *Aslandis v.*  
5 *U.S. Lines., Inc.*, 7F.3d, 1067, 1073, 274 (2d Cir., 1993).  
6 See also an excellent recent discussion in *Mercari v.*  
7 *Deutsche Bank AG*, 408 P.3d 1140 (Wash. Court App. 2018)

8 Instead -- and, again, the proposition, and it's a  
9 clear legal proposition, that the automatic stay does not  
10 suspend or toll non -- or state law or non-bankruptcy law  
11 time periods -- the Bankruptcy Code provides a 30-day  
12 statutory window after relief from the automatic stay to  
13 pursue such a right, notwithstanding its expiration under  
14 applicable non-bankruptcy law.

15 Section 108(c), however, the Debtors argue, would  
16 not apply here because by its plain terms, it provides, if  
17 applicable, non-bankruptcy law and order entered in a non-  
18 bankruptcy proceeding or an agreement, fixes a period for  
19 commencing or continuing a civil action in a court other  
20 than a bankruptcy court on a claim against the Debtor, and  
21 such period is not expired before the date of the filing of  
22 the petition, then such period does not expire until the  
23 later of the end of such period, including any suspension of  
24 such period, occurring on or after the commencement of the  
25 case or to 30 days after notice of the termination or

1 expiration of the automatic stay.

2 The Debtors point out that in Section 108(c),  
3 Congress used the term "a civil action" and "in a court" and  
4 argue that the PTAB proceeding is not a civil action in a  
5 court but, rather, an administrative action before an  
6 administrative body. And, therefore, Collegium would not  
7 have the benefit with respect to any deadline that pertained  
8 to it either directly or indirectly by it pertaining to PTAB  
9 confirmed by the extra 30 days tolling in 108 (c) (2).

10 PTAB appears to argue, notwithstanding the clear  
11 state of the law, that the mere coming into existence of the  
12 automatic stay tolls or suspends any deadline under the non-  
13 bankruptcy statute or as set by PTAB. This is clearly not  
14 the law. And my decision to lift the automatic stay here is  
15 conditioned upon there being no argument to the contrary of  
16 this whole PTAB or any other tribunal.

17 On the other hand, I am not prepared to decide the  
18 following issues: First, I am not prepared to decide  
19 whether the proceeding before PTAB is a civil action in a  
20 court. My review of that issue makes it clear that, first,  
21 the statute under which PTAB is acting, as amended, is  
22 fairly recent. And it appears that the amendment was  
23 intended to make PTAB's determination more adjudicatory.  
24 More importantly, it appears to me that not I, but PTAB, and  
25 then of course any Appellate Court, should be the

1 adjudicatory body to determine the nature of PTAB's  
2 authority and whether actions before it are properly viewed  
3 as civil actions in a court or not. However, if the  
4 ultimate determination in the non-bankruptcy forum is that  
5 they are not civil actions or that this action is not a  
6 civil action in a court, then clearly section 108(c)(2)  
7 would not toll for 30 days, upon lifting of the automatic  
8 stay, any applicable deadline imposed.

9 The second issue that I'm not prepared to decide  
10 is the nature of the deadline at issue here. It is a non-  
11 bankruptcy deadline. I believe it would be appropriate for  
12 the non-bankruptcy forum to determine the nature of that  
13 deadline. The Debtors contend that the 12-month -- subject  
14 to extension and the full extension was granted here --  
15 deadline for PTAB to rule is in the nature of a conclusively  
16 operative deadline so that if the ruling doesn't occur  
17 within that time, PTAB loses its authority to rule at all.  
18 In some ways it's even more of a serious deadline than a  
19 statute of limitations, which most courts would say is a  
20 defense as opposed to here, I believe one could argue that  
21 the Debtor's view is almost one of a substantive limitation  
22 on PTAB's ability to act.

23 Secondly, it is not clear to me that PTAB actually  
24 imposed a specific deadline on Collegium to act -- for  
25 Collegium to act to get relief from the automatic stay and,

1 therefore, fit itself within section 108(c)(2), at least for  
2 the 30-day period to come back to the PTAB and ask it to  
3 rule. There's no specific declaration by PTAB directing  
4 Collegium to seek relief from the automatic stay on pain of  
5 losing its ability to proceed in the PTAB proceeding. On  
6 the other hand, one could reasonably infer that that was, in  
7 fact, PTAB's intention because it was the whole purpose of  
8 the extension, it appears to me. But that issue I believe  
9 also should be decided by PTAB.

10 However -- and this is the second aspect of my  
11 ruling on the bankruptcy issues -- the automatic stay would  
12 not have prevented PTAB from imposing a deadline on  
13 Collegium to act, just as it would not extend the time for  
14 any deadline other than as set forth in section 108(c),  
15 i.e., the 30 days after stay relief, to the extent 108(c)  
16 applies.

17 So if, in fact, PTAB concludes that it imposed a  
18 deadline upon Collegium that, if Collegium missed, would  
19 preclude Collegium from proceeding in the PTAB  
20 (indiscernible), then there is no provision of the  
21 Bankruptcy Code that would save Collegium from the  
22 consequences of missing that deadline. Neither 362(a) of  
23 the Bankruptcy Code nor 108(c) would protect it. But,  
24 again, the underlying determination as to whether that  
25 deadline was imposed and the consequences for missing the

1 deadline should be determined by PTAB and any Appellate  
2 Court that would have a review of PTAB's determinations.

3 So, I will ask the Debtors to prepare an order  
4 granting the Debtor's motion and Collegium's motion on the  
5 condition, however, that Collegium is barred from contending  
6 in any non-bankruptcy forum that the automatic stay toll  
7 extended or precluded the imposition of any deadline imposed  
8 upon it or upon PTAB in the PTAB proceeding. And, secondly,  
9 that section 108(c)(2) would not apply to extend such a  
10 deadline if it is determined in the non-bankruptcy forum  
11 that the PTAB action is not a civil action and/or that PTAB  
12 is not a court for purposes of section 108(c).

13 I hope that's clear. If not, you can get the  
14 transcript, but the order should provide for that. It is  
15 clear to me that the plain language of the statute is  
16 limited to civil actions and courts. In all likelihood, one  
17 should not have to go beyond that. However, it is also the  
18 case that the case law has not extended those plain terms to  
19 actions where there are deadlines that are not either  
20 deadlines pertaining to court or civil action actions, or in  
21 a civil action or set by a court. See, for example, Sywilok  
22 v. IRS, in re: Ginnito 529 B.R. 452, 460-61, (Bankr. D. NJ)  
23 and in re: Vassilowitch, 72 B.R. 803, 806-07, (Bankr. D.  
24 Mass.), and finally, in re: RDR Systems Development, Inc.,  
25 57 B.R. 540 (Bankr. M.D. La. 1986). See also 2 Collier on

1 Bankruptcy, paragraph 108.04 [1 16th Ed. 2020].

2 Distinguished from those cases are in re: Shamus  
3 Holdings, LLC., 642 F.3d 263 266-267 (1st Cir. 2011), in re:  
4 Hoffinger Industries, Inc., 329 B.R. 948, in re: APC  
5 Construction, Inc., 112 B.R. 89, 118-120, Bankr.  
6 (indiscernible) 1990). And, finally, in re: William Bond  
7 Ventures, LLC, 603 B.R. 293, (Bankr. E.D. La. 2019)

8 In each of those cases, although an action that  
9 would appear to be a non-court related action was determined  
10 to be told for 30 days under section 108(c), it's clear from  
11 the discussion that in each case the action was to be taken  
12 in connection with a court action -- a civil proceeding,  
13 namely, a foreclosure action and the enforcement of a  
14 mortgage.

15 And, again, I'm leaving it up to the Patent Trial  
16 and Appeal Board to determine whether it is a court in a  
17 civil action under the statute, and the proceeding before it  
18 is a civil action under its statute. And, of course, that  
19 would apply to any courts that have an appeal on that  
20 decision.

21 So, are there any questions?

22 MR. GAUTIER: Your Honor, this is Scott Gautier  
23 with Robins Kaplan. First, thank you very much for that  
24 very lengthy and detailed decision this morning. I want to  
25 make sure as we go forward just to alleviate any -- you



1 know, coming back over any sort of misinterpretation. But  
2 the last point, Your Honor, that you made as I understand it  
3 -- the order will reflect that Collegium is barred from  
4 contending in any non-bankruptcy forum that the imposition  
5 of any deadline is tolled under 108(c) unless the PTAB  
6 decides that it is both a civil action and that the PTAB is  
7 a court. Is that correct, Your Honor?

8 THE COURT: Right. With regard to the -- for this  
9 pending action.

10 MR. GAUTIER: Right. I just want to make sure  
11 that the bar --

12 THE COURT: That's correct. And, of course, PTAB  
13 may not be the last word on that. It may go to, you know,  
14 the District Court, Appellate Court, anybody that has  
15 authority to review its decisions. But that would be a non-  
16 Bankruptcy Court chain of determination.

17 MR. GAUTIER: Thank you again, Your Honor.

18 THE COURT: Yeah. And, of course, you can appeal  
19 me in my ruling, but you can't make that argument outside of  
20 the Appellate process in front of me.

21 MR. GAUTIER: You know, it occurs to me that  
22 Collegium -- I don't know what the client will want to do --  
23 but Collegium may want to appeal this Court's decision. But  
24 the issue here now is one of timing, right? First, I think  
25 it makes sense to go back to the PTAB, and then if PTAB

1 rules that it wasn't, then coming back and saying that the  
2 stay didn't apply would probably be too late. I guess we'll  
3 have to consider that.

4 THE COURT: Well, the PTAB's already determined  
5 that the stay did apply. So, I -- that's -- so, it's only  
6 if they determined that it didn't apply and they were wrong  
7 that their action would've been void.

8 MR. GAUTIER: I'm wondering whether or not there  
9 could be some relief that permits everyone to go back to the  
10 PTAB and then suspend the time to appeal --

11 THE COURT: That's -- I -- I'm going to leave that  
12 up to you all to think about. I am not going to touch that  
13 today.

14 MR. GAUTIER: Okay, thank you, Your Honor.

15 THE COURT: Okay. All right, so I think that  
16 concludes today's calendar. And hearing from no one on that  
17 point, I will ring off.

18 MR. HUEBNER?: Your Honor, thank you very much, as  
19 always, for all that you do for us and others and I hope  
20 everyone's being safe, healthy and --

21 THE COURT: Okay. And for those of you who are  
22 still on the line, please do everything you can to close the  
23 loop before the end of the month. There are still a few  
24 days left. I know people are working very hard on it. You  
25 have two excellent mediators. And all of your constituents

1 would be well-served by your doing everything you can and  
2 speaking to your constituents to do everything they can to  
3 reach consensus on how the value in this case is to be  
4 distributed. So, I will ring off at this point. Thanks  
5 very much.

6 AUTOMATED VOICE: The judge has left the call. If  
7 this was an accident or you were instructed by the judge to  
8 rejoin the call, please call back. Thank you for using  
9 Court Solutions. Goodbye.

10 (Whereupon these proceedings were concluded at 0:00 PM)  
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: August 27, 2020

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